**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

**DIVISION THREE**

| | | |
|---|---|---|
| JERRY L. HUSKEY, | ) | No. ED109277 |
| | ) | |
| Movant/Appellant, | ) | |
| | ) | Appeal from the Circuit Court |
| | ) | of Lincoln County |
| vs. | ) | Cause No. 18L6-CC00094 |
| | ) | |
| STATE OF MISSOURI, | ) | Honorable Thomas J. Frawley |
| | ) | |
| Defendant/Respondent. | ) | Filed: November 30, 2021 |

Jerry Huskey ("Movant") appeals the judgment denying his Rule 24.035 motion after an evidentiary hearing.

VACATED AND REMANDED FOR TIMELINESS HEARING.

Division Three holds:

Movant did not present any evidence to support the allegation regarding his delivery date to the Department of Corrections. Therefore, he did not prove that his Rule 24.035 motion was timely. The proper remedy here is to vacate the judgment and remand with directions to hold an evidentiary hearing for the purpose of determining the timeliness of Movant's *pro se* motion.

Opinion by: Colleen Dolan, J.

Philip M. Hess, P. J., and Angela Quigless, J., concur.

Attorney for Appellant: Samuel E. Buffaloe

Attorney for Respondent: Karen L. Kramer

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**